

Republic of Iraq  
Federal Supreme Court  
Ref. 112/ federal /media/ 2014



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 21.4.2015 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

**The plaintiff:**

(kha. alif. jim.).

**The defendants:**

1. (alif. alif. Jim.).
2. (waw.lam. alif.).

**The claim:**

The plaintiff himself claimed that he have shares in joint ownership in the property (house and small house) that are built on the plot no.(9/45/m 22 Ragbaa Khatoon) with the defendants, first defendant occupy the small house and the second defendant occupy the house, the second defendant initiated lawsuit to remove joint ownership before Aedamia first instant court which issued the rule no. 1748/b/2009 on 28.2.2010 to remove the joint ownership of the properties by selling it and distributing it value between the partners, when conducting the inspection to place the hand on the

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estates on 24.7.2014 to implement the court's decision to remove the joint ownership in the estate, the occupier of the estate (first defendant) confirm her will to remain in the small house after selling it as leaseholder according to the provision of article (15) of real estate lease law no.(87) of 1979, the plaintiff clear that giving the partner in the property the right to continue to occupy the small house, which is part of the property that is no longer common after selling it, as leasehold capacity, will lead to the undervaluation of the property upon sale, as no one buys a property with huge sums while it is occupied with a leaser who cannot take it out for a period of (12) years according to real estate lease law, accordingly he can't deal with it as what he want which consider abusing and big lost for him, therefore the mentioned article consider illegal , the plaintiff mentioned a verses of holy Quran, and articles (2/1<sup>st</sup>/ b and c, 14, 16, 19) of the constitution, he stated that the article deprive the partner who don't occupy the estate to be fair treated as the partner who occupy the property and is willing to remain as leasehold capacity after selling it, in the judicial and administrative procedures as detailed in case petition. he requested to rule the illegitimacy of article (15) of real estate lease law, and to not implement it in the lawsuit no.(1748/b/2009) and to delay the original lawsuit until the decision. the answering letter of Aedamia first instant court to the F.S.C. letter stated that original dossier of removing common ownership was sent to the presidency of Baghdad appeal/ federal Resaffa to consider it in it cassation capacity, the lawsuit draft submitted to the F.S.C. by the first instant court, the procedures of selling the property is continue on, from that the conclusion is that the plaintiff requesting to stop the selling procedure (bidding). After



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registration the lawsuit before the F.S.C., the defendant was informed with the case petition, they responded with the answering draft requesting to set an impediment to all who intend to exploit the Iraqi judiciary. The date 21.4.2015 was scheduled for the argument, the parties was informed, the agent of the plaintiff and the agent of defendant attended. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

**The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff claimed that he have shares in joint ownership in the property no.(9/45/m 22 Ragbaa Khatoon) with the defendants, the rule no. 1748/b/2009 was issued to remove the joint ownership of the properties by selling it and distributing it value between the partners, the occupier of the estate (first defendant) confirm her will to remain in the small house after selling it as leaseholder according to the provision of article (15) of real estate lease law no.(87) of 1979, that harmed him as no one buys a property occupied with a leaser, he requested to rule the illegitimacy of article (15) of real estate lease law. The F.S.C. finds that the plaintiff initiated the lawsuit himself without considering article (20) of the F.S.C. Bylaw which obligates that the claims and requests must be submitted to the court throw attorney with absolute power, also the litigation against the defendants is not right as the challenge include the illegitimacy of article (15) of real estate lease law that is

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unconstitutional, the conditions of the lawsuit that the defendant must be a litigant his admission lead to a judgment by assessing issuing an admission from him, and he also must be convicted or obliged by something if the case was approved according to article (4) of civil procedures law, as challenging the constitutionality of law article require to litigate the legislator of the law, as the defendants are not the one who legislate it, so the lawsuit was initiated contrary to the stipulated formality in the F.S.C. bylaw and the provisions of civil procedures law. accordingly the court dismissed the plaintiff case and to burden him the expenses. This decision has been issued unanimously, final and public on 21.4.2015 .